

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CERTAINTIED CORPORATION,

Plaintiff,

v.

BOISE CASCADE CORPORATION,

Defendant.

NO. 02-2677

Hon. William H. Yohn

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of plaintiff's motions to preclude the proposed testimony and expert reports of Greg Brooks, Michael Stepnowski and Tony Spaeth, and the submissions of the parties with respect thereto, it is hereby **ORDERED** that said motions are **DENIED**.

William H. Yohn, Jr., U.S.D.J.

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BOISE CASCADE CORPORATION,

Defendant.

NO. 02-2677

Hon. William H. Yohn

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO PRECLUDE
THE PROPOSED TESTIMONY AND EXPERT REPORTS
OF GREG BROOKS, MICHAEL STEPNOWSKI AND TONY SPAETH**

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I. INTRODUCTION

Plaintiff (“CertainTeed”) has moved to exclude the reports and testimony of all five of defendant’s (“Boise’s”) expert witnesses. Because the issues overlap, Boise submits this single opposition to the motions relating to the reports and testimony of Greg Brooks, Michael Stepnowski and Tony Spaeth.

CertainTeed’s motions share a common goal – to prevent the Court from considering evidence critical to determining the scope to be afforded to CertainTeed’s “Building Solutions” trademark rights, and whether Boise’s customers are likely to be confused by Boise’s use of the term “Boise Building Solutions” to describe Boise’s building-related business. The motions also share a common complaint – that there are details (e.g., how an Internet search was conducted) missing from the reports, and that the reasoning or assumptions underlying the reports are faulty. These complaints do not justify excluding the testimony of the witnesses.

As to details, CertainTeed has taken or will take depositions of all the witnesses, and can find out all the details necessary to understand the methodology and approach of the witnesses. As to the reasoning or persuasiveness of the reports, those arguments go to the weight to be accorded the evidence and can be explored during cross examination. They are not a basis for wholesale exclusion of witnesses, particularly where this trial will not involve a jury.

Further, the testimony is clearly relevant to the Court’s determination of the issues and thus will “assist” the fact finder (i.e., the Court) as required by Rule 702 of the Federal Rules of Evidence. In particular, CertainTeed claims that the term “Building Solutions” is distinctive and is associated exclusively with it. CertainTeed also claims that Boise’s use of “Boise Building Solutions” is likely to confuse customers as to the source of Boise’s products. The testimony of the experts is directly relevant to these claims. Mr. Brooks is a recognized expert in connection with the distribution of building materials, who knows how building materials are distributed and purchased, and who can assist the Court in understanding whether the customers of Boise are likely to be confused by Boise’s use of the term “Boise Building Solutions” to describe its building business. Boise does not, for example, sell its products on a retail basis. Instead, they

are sold through distributors or, in some cases, directly to retailers (e.g., Home Depot). Because Boise's products do not include the term "Boise Building Solutions" (as opposed to "Boise" alone), the only confusion that can occur is with the direct purchaser of Boise's products. Mr. Brooks will provide important evidence as to how building materials are sold and purchased, whether "building solutions" is a distinctive term in the industry, and whether a buyer for a lumberyard or retail establishment is likely to be confused as to the source of Boise's products from Boise's use of "Boise Building Solutions" as the name of a division.

Similarly, Mr. Stepnowski is an experienced contractor, and is Chairman of the Philadelphia Chapter of the General Building Contractors Association, the largest organization of general contractors in the area. Mr. Stepnowski can provide valuable insight as to how contractors interpret the term "building solutions," as well as to whether contractors would likely be confused, as CertainTeed claims, by Boise's use of the term "Boise Building Solutions."

Mr. Spaeth, an expert on branding and corporate identity, provides testimony regarding the increasingly popular use of "solutions" as a descriptor for businesses' activities (e.g., "Home Solutions," Document Solutions," and "Fitness Solutions," etc.). Mr. Spaeth's testimony is directly relevant to whether or to what extent the term "building solutions" is a generic or descriptive phrase meaning solutions to building challenges or, alternatively, as CertainTeed asserts, is "distinctive" in the industry and is interpreted as referring to CertainTeed or its products.

The testimony of all these experts will assist the Court in resolving these issues, and their testimony should not be excluded.

II. PERTINENT FACTS

A. CertainTeed Claims Exclusive Rights in the Term “Building Solutions”

This case arises because CertainTeed claims the exclusive right to use the term “Building Solutions,” and claims that Boise’s use of the term “Boise Building Solutions” for its business is likely to confuse customers. In addition to seeking an injunction to preclude Boise’s use of the term, CertainTeed claims that it is entitled to unjust enrichment damages of more than \$3.2 million. CertainTeed makes its claims based on two registrations, and a claim of “common law” rights. One trademark registration – U.S. Trademark Registration No. 2,390,753 – is for the term “Building Solutions” for two narrow sets of services (and services that would not be considered “building solutions”). In particular, the services recited in the registration are: (1) “preparations of customized marketing information for others, all related to building materials for builders, architects and designers,” and (2) “analysis of electrical power and energy needs of others, consulting services in connection with the design of electrical systems for others.”

Boise does not use the term “building solutions” or even “Boise Building Solutions” in connection with such services. Nevertheless, CertainTeed asserts that the registration provides it rights against persons and companies that provide building materials and services (i.e., provide “building solutions”).

CertainTeed's other registration – U.S. Trademark Registration No. 1,823,200 – is for “Building Solutions” adjacent to a sunflower:

Int. Cl.: 37

Prior U.S. Cl.: 103

United States Patent and Trademark Office

Reg. No. 1,823,200

Registered Feb. 22, 1994

SERVICE MARK
PRINCIPAL REGISTER



Building Solutions

LETOVSKY, CHARLES (CANADA CITIZEN)
56 PETER BULKELEY RD.
CONCORD, MA 01742

FOR: RESIDENTIAL AND COMMERCIAL
BUILDING CONSTRUCTION; NAMELY, CAR-
PENTRY, ADDITIONS AND DESIGN CON-
SULTING, IN CLASS 37 (U.S. CL. 103).
FIRST USE 12-15-1989; IN COMMERCE
5-10-1990.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE “BUILDING”, APART FROM
THE MARK AS SHOWN.

SER. NO. 74-324,766, FILED 10-23-1992.

ROBERT C. CLARK JR., EXAMINING ATTOR-
NEY

This mark, which was purchased by CertainTeed from a contractor (Mr. Letovsky) who operates a small business in Massachusetts, is for “residential and commercial building construction; namely, carpentry, additions and design consulting.”

Boise does not use a sunflower associated with its business at all and does not provide the specific services listed in the registration. Nevertheless, CertainTeed is claiming that this registration also covers Boise's activities.

Finally, CertainTeed claims “common law” rights based on its use of the term “Building Solutions.” In particular, CertainTeed claims that the “BUILDING SOLUTIONS mark . . . is inherently distinctive when used in connection with the programs, goods and services of CertainTeed” and that the “BUILDING SOLUTIONS marks have become well and favorably known to the relevant trade and public and have been and are associated with CertainTeed and with no other entity in the construction products industry.” Complaint, ¶¶ 14-15.

B. CertainTeed Claims that Boise's Use of "Boise Building Solutions" is Confusing Customers

To prevail in this action, CertainTeed must prove that Boise is infringing its trademark rights which, in turn, requires it prove that Boise is engaged in activities that are likely to confuse consumers vis-à-vis CertainTeed's trademarks. *See* Complaint, ¶ 24 (allegation of confusing similarity). In March 2002, Boise, which was then known as Boise Cascade Corporation, adopted "Boise" alone as its corporate brand and dropped its tree logo. Boise's major business units at the time used the terms "products" or "materials" to describe their activities (e.g., "Boise Cascade Office Products," "Boise Cascade Paper Products," and "Boise Cascade Building Materials, Distribution."). Though these divisions were described as providing "products" or "materials," a survey of customers revealed that Boise's business units were known for more than simply providing office, paper and building products; Boise was best known for the expertise of its people and their prompt and reliable service. Because "products" or "materials" did not adequately describe the full range of products, services and expertise provided by Boise, Boise needed a more descriptive nomenclature for its business units. Accordingly, Boise adopted the names "Boise Paper Solutions," "Boise Office Solutions," and "Boise Building Solutions" as the descriptors for its businesses. Though the business unit nomenclature is used to identify the divisions, the nomenclature is always used with the "Boise" name, which is, in most cases, much more prominent (e.g., "**BOISE BUILDING SOLUTIONS**"). Further, the nomenclature is not used to promote Boise's products and services. The "Building Solutions" nomenclature is not, for example, used on any Boise products, product packaging or vehicles. Instead, the name "Boise Building Solutions" is used in a narrow fashion, such as for signage for buildings (none of which are open to the public), investor and corporate materials, and in certain promotional pieces where it is used only to identify the business and only adjacent to and in smaller font than the "Boise" name. *See* example of advertising attached hereto as Exhibit 1.

With this background, it is easy to understand why the expert testimony of Boise's experts will assist the Court, and why it is necessary for the introduction of certain relevant

evidence. CertainTeed claims the term “Building Solutions” is “inherently distinctive,” is associated with CertainTeed, and that Boise’s use of the term “Boise Building Solutions” as the name of a division is likely to cause confusion. These are the very subjects that Mr. Brooks, Mr. Stepnowski and Mr. Spaeth address in their testimony. The witnesses will provide evidence that the term “solutions” and “building solutions” are commonly used terms and are not associated with any particular company. The term “building solutions” is used by numerous companies, both as all or part of a name of a building business or as a generic or descriptive term (e.g., “we provide building solutions. . .”). This evidence is directly relevant to whether or to what extent CertainTeed can claim trademark rights that cover “Boise Building Solutions.” *See First Keystone Federal Savings Bank v. First Keystone Mortgage, Inc.*, 923 F. Supp. 693, 704 (E.D. Pa. 1996) (“Plaintiff’s name is similar to many other businesses around the nation and similar to six other businesses in Pennsylvania. This fact weakens Plaintiff’s name and any minor additions or changes to that mark effectively negate any arguably confusing similarity between the two.”) (granting summary judgment to defendant).

III. THE EXPERTS SHOULD BE ALLOWED TO TESTIFY

A. Fed. R. Evid. 702 and the Third Circuit Liberally Allow Expert Testimony

Federal Rule of Evidence 702 allows expert testimony where it “will assist the factfinder.” Rule 702 provides three “substantive restrictions on the admission of expert testimony: qualifications, reliability and fit.” *Elcock v. Kmart Corp.*, 233 F.3d 734, 741 (3d Cir. 2000). A trial court has broad discretion to determine the admissibility of expert testimony, and even greater latitude in a bench trial because of the judge’s dual role as gatekeeper and factfinder. *In re Unisys Savings Plan Litig.*, 173 F.3d 145, 158 (3d Cir. 1999) (overruled in non-relevant part as stated in *Elcock v. Kmart Corp.*, 233 F.3d 734, 744-45 (3d Cir. 2000) by *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999) in that it holds non-scientific evidence not covered by *Daubert*).

The Third Circuit applies “a generally liberal standard” for qualifying experts. *Elcock v. Kmart Corp.*, 233 F.3d 734, 742 (3d Cir. 2000). As CertainTeed concedes, a witness may be an expert in a specific area because of his or her expertise. As discussed below, all the witnesses who are subjects of this motion are experts (i.e., have expertise) in a relevant area. Mr. Brooks is an expert on the distribution of building materials, including their channels of trade, and how relevant persons (i.e., buyers for lumberyards and retailers) would perceive the term “building solutions.” Mr. Stepnowski is an expert in general contracting, including how contractors buy products, and whether or to what extent they would consider the term “building solutions” to be associated with CertainTeed. Mr. Spaeth is a recognized expert in the areas of branding and corporate identity, and can provide testimony on whether the term “building solutions” would be considered “inherently distinctive.”

Reliability exists if an expert’s opinion is based on scientific methods and procedures, so that the expert has “good grounds” for his or her belief. *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 742 (3d Cir. 1994) (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993)). The standard is not intended to be high; the conclusions should be reliably connected to the facts and methodology, but the plaintiff need not prove its case. *Id.* at 745; *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 153 (3d Cir. 1999). In this case, the witnesses are not expressing opinions based on absurd scientific theories, or any other approach that is unreliable. They express opinions based upon their experience and personal knowledge, as well as on searches on the Internet. There is no basis for arguing that Internet searches are not a reliable way to identify how broadly a term is being used.

Finally, the expert testimony must “fit” – it must assist the trier of fact, relaying some connection between the research or result and a particular factual dispute. *Oddi v. Ford Motor Co.*, 234 F.3d 136, 145 (3d Cir. 2000). “This standard is not intended to be a high one.” *Id.* at 145; *see also In re Paoli*, 35 F.3d at 744. As noted above, each of the experts provides testimony that “fits” the case, particularly in light of CertainTeed’s claims that the term “building

solutions” is “inherently distinctive,” is associated exclusively with it, and that Boise’s use of the term is likely to confuse Boise’s customers.

B. Mr. Brooks Should Be Allowed To Testify

As noted above, CertainTeed claims that Boise’s use of the term “Boise Building Solutions” is “likely to cause confusion with CertainTeed’s registered marks” and that “[m]embers of the relevant trade and public who see Boise’s use of BUILDING SOLUTIONS are likely to believe in error that Boise’s goods are made by or are under license from CertainTeed or that Boise’s products are sold in affiliation with or under license from CertainTeed.” Complaint, ¶¶ 29-30. To understand the merits of the claim, the Court must understand how building materials are distributed. Boise does not sell directly, for example, to any end users. Instead, Boise sells to distributors and retailers of building materials (e.g., lumberyards and Home Depot stores). A key issue in this case is whether the buyers from such establishments are likely to be confused as to the source of the products they are purchasing.

To better understand this issue, the Court needs to understand how Boise products are distributed and purchased. Courts have long recognized that factors relevant to likelihood of confusion include “factors indicative of the time and attention expected of consumers while making a purchase,” and whether the party’s goods are “marketed through the same channels of trade and advertised through the same media.” *See First Keystone Federal Savings Bank v. First Keystone Mortgage, Inc.*, 923 F. Supp. 693, 704 (E.D. Pa. 1996) (listing likelihood of confusion factors).

As reflected in Mr. Brooks expert report, he is an expert on the distribution of building materials, including the channels of distribution and buying practices in the industry. He has 35 years of background in connection with the building materials business, has conducted seminars throughout the industry, and has published, among other things, more than 150 feature articles relating to the industry. He is familiar with both Boise and CertainTeed’s products, and has

conducted seminars for both Boise and CertainTeed executives. *See* Exh. No. 2 (background and list of publications of Mr. Brooks).

He explains in his report how building materials are purchased by builders and retailers, and who makes the decisions. He will assist the Court in understanding the care taken by retail buyers, and how a generic term such as “building solutions” would be interpreted. His report identifies six reasons why Boise’s use of the term “Boise Building Solutions” is unlikely to cause confusion: (1) the common use of the term by others in the industry; (2) the different nature of the uses by Boise and CertainTeed; (3) the fact that the parties do not have directly competing products; (4) the different manners in which the parties advertise or promote their products and service; (5) the sophistication of the direct buyers of Boise and CertainTeed products, including the care they exercise in purchasing such products; and (6) the fact that both companies use their well recognized brands (i.e., “Boise” and “CertainTeed”) in connection with the terms. His testimony is directly relevant to the Court’s determination of whether a likelihood of confusion exists.

CertainTeed’s objections to Mr. Brooks’ testimony do not withstand scrutiny. CertainTeed’s first complaint is that his report “discloses no special skill, knowledge or educational background regarding branding issues that qualify him as an expert on any material issue in this case.” Motion at 4. Boise is not purporting that he is a “branding” expert. Mr. Brooks is an expert in the building materials industry, including the manner in which products are sold and distributed throughout the industry.

Similarly, CertainTeed complains that Mr. Brooks’ report does not “explain how his experience leads to the conclusions reached. . . .” *Id.* at 4. This is not true. Mr. Brooks’ report explains his understanding of the industry, the parties’ products, the channels of trade in which the parties market and sell their products, the common use of “building solutions,” and why Boise’s use of the “Boise Building Solutions” for its products is not likely to cause confusion. CertainTeed also complains that Mr. Brooks’ report does not give all the specifics about how his

“search was conducted.” Motion at 5. Mr. Brooks explained that his search was conducted at Google.com. It is relatively common knowledge how to conduct a search using an Internet search engine such as “Google.” In any case, to the extent CertainTeed has any questions about how the search was conducted, it may pose those questions at Mr. Brooks’ deposition.

CertainTeed also refers to alleged “inconsistencies” in Mr. Brooks’ report. *Id.* at 5-6. The assertions are more appropriate for cross examination; they do not go to whether Mr. Brooks should be excluded from testifying.

C. Mr. Stepnowski Should Be Allowed To Testify

Many of the same comments regarding Mr. Brooks’ testimony apply to Mr. Stepnowski’s testimony. CertainTeed is asserting that persons in the industry are confused by Boise’s use of the term “Boise Building Solutions.” Mr. Stepnowski is the Chairman of the Board, as well as serving on various other committees, of the Philadelphia Chapter of the General Building Contractors Association, the largest Philadelphia-area general contractor association. As reflected in the materials attached hereto as Exhibit No. 3, Mr. Stepnowski is an expert in the area of general contracting. He has worked as a contractor for more than 25 years, and thus has extensive experience in how contractors purchase building materials, and whether or to what extent persons in the industry associate “building solutions” with CertainTeed. His testimony will assist the Court in understanding how building materials flow through the distribution system, and whether or to what extent contractors, when purchasing building materials, could be confused by Boise’s use of the term “Boise Building Solutions” (which is not even placed on Boise’s products). In particular, Mr. Stepnowski explains that he does not believe that persons in the industry would consider the term “building solutions” to be associated with a specific product, manufacturer or distributor, as opposed to being a marketing phrase for building products and services. He supports his opinion based, in part, on an Internet search that shows widespread use of the term “building solutions.”

CertainTeed's objections to Mr. Stepnowski's report are more appropriate subjects for cross examination, not exclusion, and/or relate to questions they have about the methodology for his Internet search, which can be explored at deposition. There is no justification for wholly excluding Mr. Stepnowski's testimony when, through his longstanding participation in the building industry, he has expertise and knowledge that will assist the Court in determining whether the term "building solutions" truly has "secondary meaning" to persons in the industry and whether Boise's use of the term "Boise Building Solutions" is likely to cause confusion.

D. Mr. Spaeth Should Be Allowed to Testify

Mr. Spaeth should also be allowed to testify. Mr. Spaeth is a recognized expert on branding and corporate identity issues. *See* Exh. No. 4 (summary of background). He has spent decades involved in "corporate identity" projects, including developing nomenclature systems that are used for "defining, and communicating, the nature and scope of the parent corporate brand." Report at 1.

His testimony is directly relevant to whether, as CertainTeed claims, the term "building solutions" is distinctive or, alternatively, whether the term "building solutions" is more likely to be interpreted as a generic phrase or descriptive phrase intended to identify the nature of a company's business. In particular, his testimony will explain that the term "solutions" has become a common term to communicate that a company offers more than products – the company offers "solutions" to a customer's problems or challenges. Again, his testimony will assist the Court in determining whether, as CertainTeed claims, the term is truly distinctive and thus protectable as a common law trademark.

CertainTeed raises no persuasive reasons to exclude Mr. Spaeth's testimony. CertainTeed complains, for example, that Mr. Spaeth improperly assumes that Boise will not use the term "building solutions" without the "Boise" brand name. Motion at 4. CertainTeed complains that there is "no support for the conclusion that the term will 'never appear (or be spoken)' in a certain manner. . . ." *Id.* At most, CertainTeed is attacking an assumption

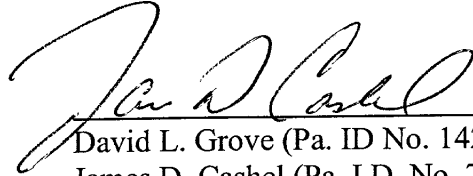
underlying Mr. Spaeth's conclusions. Such an attack should occur during cross examination, and is not a basis for excluding Mr. Spaeth's testimony (e.g., experts often make assumptions in reaching an opinion).

Similarly, CertainTeed complains that Mr. Spaeth's testimony is not relevant because "the trademark at issue in this case is not 'Solutions,' but 'BUILDING SOLUTIONS.'" Motion at 5. Although true, this does not render Mr. Spaeth's testimony irrelevant. The word "building" is obviously a generic phrase, and has even been "disclaimed" in CertainTeed's U.S. Trademark Registration No. 1,823,200. The widespread use of "solutions" is inconsistent with the claim that the term "building solutions," which consists of two generic terms, can be distinctive, at least in connection with providing building products and services (e.g., "apple" is generic for an apple, but "distinctive" for a computer). Mr. Spaeth's testimony will assist the Court and thus should not be excluded.

IV. CONCLUSION

For the reasons set forth above, CertainTeed's motion to exclude the proposed testimony and expert reports of Greg Brooks, Michael Stepnowski and Tony Spaeth should be denied.

RESPECTFULLY SUBMITTED this 22nd day of May, 2003.



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EXHIBIT 1

OUR NEWEST BUILDING PRODUCT WILL HELP YOU BUILD



YOUR BUSINESS.

WHERE DO YOU SEE YOUR BUSINESS GROWING?

Higher sales? Better profit margins?
Deeper customer relationships?
Wouldn't it be great to have a roadmap
to make sure you're going down the
right highway?



The Boise Business Planning Process

Introducing the Boise engineered wood products business planning process, to help you decide where you want your business to go. From Boise, your partner in profitability. Anybody can deliver an H-plot. Today, what's important is a business relationship that helps you get where you want to go.

The Boise business planning process is unique in the industry. Working with your Boise people and data they've collected, you'll determine your ideal business plan and market niche. You'll have a list of prospects and ideas about how to get your foot in the door. Inventory levels will be optimized to have the right products on hand and save on interest costs. You'll hear about areas of your business that could be improved, and employee training and development to keep your people on the cutting edge.

Now's the time to get started. Call your Boise representative to begin putting the Boise business planning process to work for you. For a better tomorrow.



Analyze your market and determine how much of it you'd like to own.

BOISE

Building Solutions
Engineered Wood Products

www.boisepro.com

For your nearest distributor, call 800-233-0788.

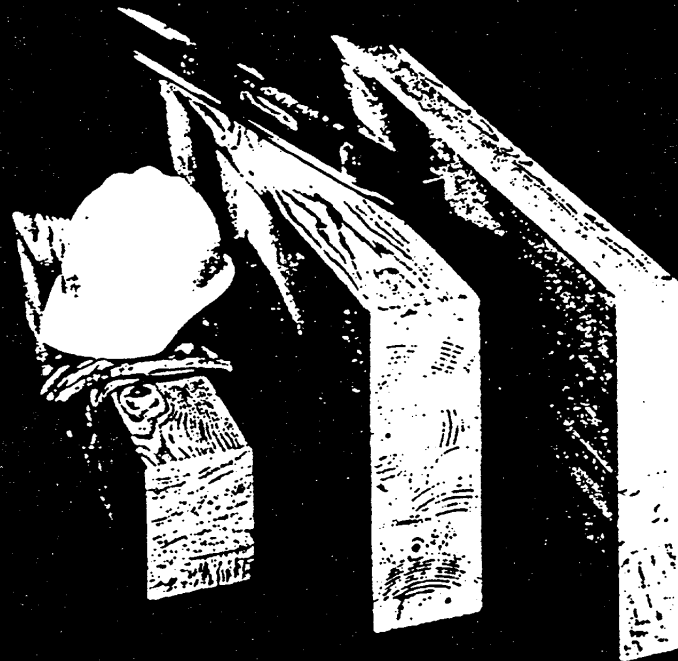
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BC 042833
CONFIDENTIAL

EXHIBIT 24
Report: Confidential
Date: 11-03-03 Ref: AS

BOISE

Building Solutions
Engineered Wood Products



BOISE GLULAM™

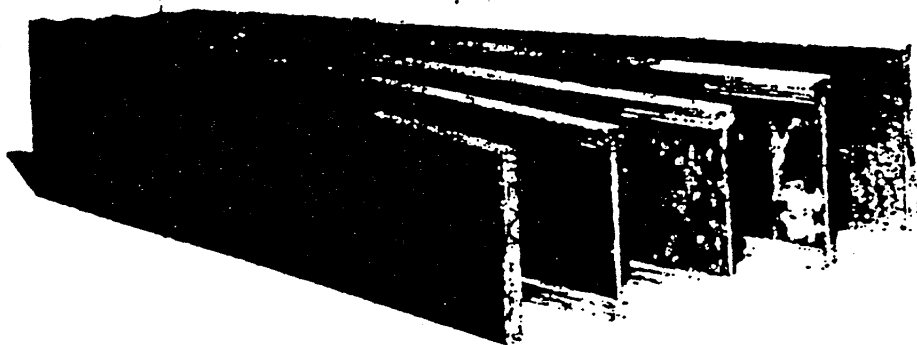
Product Guide

EXHIBIT 18
document CertainTeed
e2-11-03 Rptr. AS
WWW.DEPOTBOOK.COM

BC 012096

THE STRONG, SILENT TYPE.

Boise's Simple Framing SystemSM is stronger and more reliable than ordinary lumber. That makes for stable, quiet floors and true walls and ceilings. To learn how our family of BCISM Joists, Versa-RimSM and Versa-LamSM products can build your reputation, see your building materials dealer.



BOISESM

Building Solutions, Distribution

Boise Distribution
101 Prosperity Road SE
Albuquerque, NM 87105
505/877-8150
Fax 505/877-7916

Boise Distribution
P.O. Box 30437 (Zip 59107-0437)
1240 S. 29th Street West
Billings, MT 59102
406/652-3250
Fax 406/656-9969

Boise Distribution
P.O. Box 5797 (Zip 83705-0797)
4300 Enterprise
Boise, ID 83705-5421
208/384-7700
Fax 208/345-1517

Boise Distribution
P.O. Box 5767-TA (Zip 80217-5767)
1351 East 66th Avenue
Denver, CO 80229-7222
303/289-3271
Fax 303/288-0476

Boise Distribution
615 S. 15th Street
Grand Junction, CO 81501
970/244-8301
Fax 970/244-8316

Boise Distribution
P.O. Box 2107 (Zip 83403-2107)
3890 Bombardier Avenue
Idaho Falls, ID 83402-4302
208/522-6564
Fax 208/524-0308

Boise Distribution
P.O. Box 19009 (Zip 85005-9009)
200 South 35th Avenue
Phoenix, AZ 85009
602/269-6145
Fax 602/272-6484

Boise Distribution
P.O. Box 65458 (Zip 84165)
1020 West 3265 South
Salt Lake City, UT 84119
801/973-3943
Fax 801/972-1937

Boise Distribution
P.O. Box 13389 (Zip 99213-3389)
East 7020 Mission Avenue
Spokane, WA 99212
509/928-7650
Fax 509/922-0599

Boise Distribution
P.O. Box 369 (Zip 98666)
3309 NW Lower River Road
Vancouver, WA 98660
360/693-0057
Fax 360/693-1049

Boise Distribution
P.O. Box 168 (Zip 98072-0168)
8720 216th Street SE
Woodinville, WA 98072
425/486-7477
Fax 425/402-1291

Boise Distribution
P.O. Box 9877 (Zip 98909-0877)
1512 South First Street
Yakima, WA 98901
509/453-0305
Fax 509/453-5629

Circle No. 151 on p. 70

JULY 2002 THE MERCHANT MAGAZINE

19

BC 033969

Δ π EXHIBIT

9

Deponent

CertainTeed

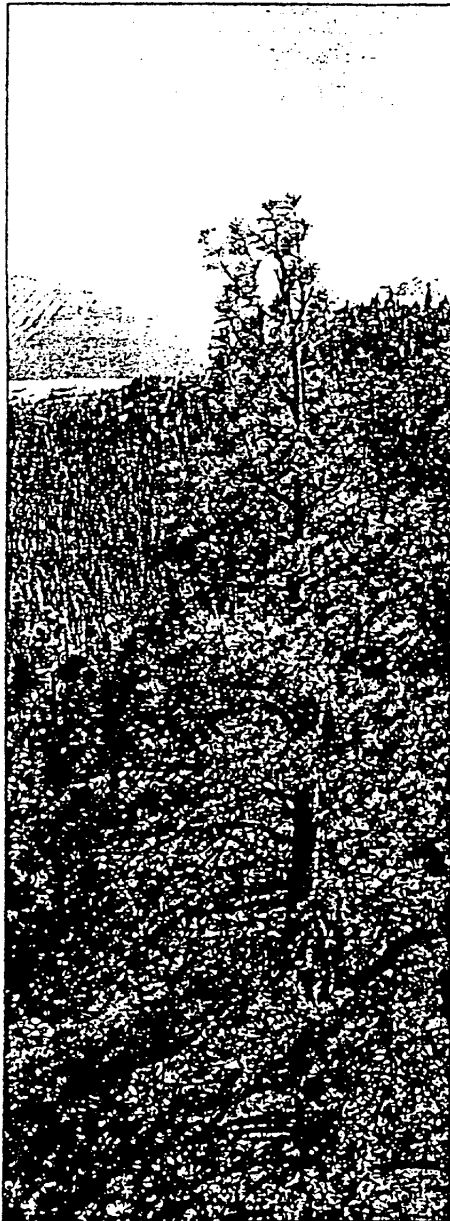
Date 1-11-03 Rptr. AS

WWW.DEPOSITBOOK.COM

WWII

Honoring Our

VETERANS



Boise, a **VETERAN** in **SUSTAINABLE FORESTRY**, salutes all veterans and especially those who served in WWII.

We take this opportunity to reflect and remember those whose spirit, sacrifice and commitment keep our nation safe and free.



BOISESM

Building Solutions, Wood Products

www.bc.com

BC 038723

Celebrating
EARTH DAY 2002



Boise's Certified Sustainable forest in Northeast Oregon

and looking toward

THE FUTURE

Our forests are
CERTIFIED SUSTAINABLE.

Boise integrates the sustainable growing and harvesting of trees with protection of wildlife, plants, soil and water quality, all while providing the renewable, recyclable wood products on which you depend, today, tomorrow and far into the future.

BOISESM

Building Solutions, Wood Products

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BC 038722

COMMON GROUND

Common Concerns • Common Practices • Common Goals

Environmental Stewardship

Boise salutes agriculture stewardship and those who manage their lands on a sustainable basis, just as we do.

Boise integrates the sustainable growing and harvesting of trees with protection of wildlife, plants, soil and water quality. Our forests are certified sustainable!

"THANKS" to the hard working men and women of the agricultural industry.



The pine marten is a species of interest & protected on Boise lands in NE Oregon.

Ponds on Boise lands provide water for fire protection, domestic livestock & wildlife.



30-year-old stand on Boise land in NE Oregon.

BOISE

Building Solutions, Wood Products

www.bc.com

BC 038721

Proclamation

Declaring
Union County

APPRECIATION DAY

For

BOISE CASCADE CORPORATION

Whereas:

Boise is the largest private
employer in Union County

Boise has continually
upgraded its facilities

Boise has implemented
environmentally sound
practices

Boise's forests are certified
sustainable

Boise contributes greatly to
the quality of life in Union
County.

It is hereby resolved that:

April 25, 2002

is declared

*Appreciation Day For
Boise Cascade Corporation.*

Thank You

UNION COUNTY Commissioners and Mayors



Boise's management team joined Union County Commissioners and Mayors in celebrating Boise Appreciation Day.

For declaring April 25, 2002

Appreciation Day for Boise Cascade Corporation



Boise's Regional
Manager Bruce Cartmel
overviewed the
company's operations.



Commission Chair
Colleen MacLeod
proclaimed Boise
Appreciation Day.



Commissioner
John Howard,
"We appreciate
Boise's contributions."



Boise's H.R. Manager
Dave Salmon
welcomed the
group.

BOISESM

Building Solutions, Wood Products

www.bc.com

BC 038724



Environmental Success

Water saved here...
Water saved there...

**REALLY
ADDS
UP**

We're Saving More Than
100 MILLION
GALLONS OF WATER PER YEAR

**Our Recent
Environmental
Upgrades Include:**

- BOILER WATER RECYCLING SYSTEMS
- ADVANCED STEAM CONTROL SYSTEMS
- NEW CLOSED-LOOP COOLING SYSTEMS

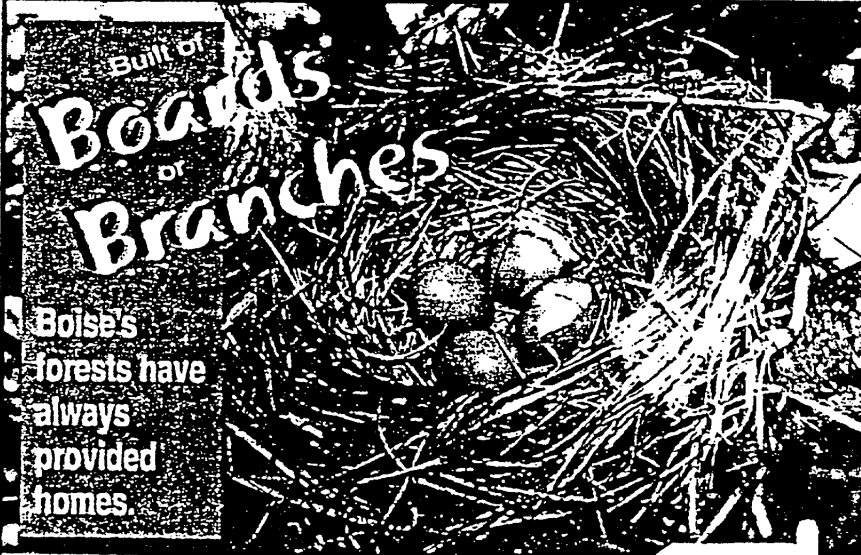
Because conserving water is the right thing to do.

BOISESM

Building Solutions, Wood Products

www.bc.com

BC 038725



Built of
Boards
or
Branches

Boise's
forests have
always
provided
homes.

Whether your habitat is constructed
of boards or branches, Boise is working
to provide you with the very best.

BOISE
Building Solutions, Manufacturing

www.bc.com

BC 038726

*Welcome
Players
and Fans to the
American Legion Single A
Northwest Regional
Tournament*



GRAND SLAM!

SUSTAINABLE FORESTRY

assuring
forests
for the future
through
certified
sustainability

BOISE

Building Solutions, Wood Products

www.boc.com

BC 038727

BOISESM

honored to serve as a **Community Partner**



*Our
Mission
in
Northeast Oregon*

As a community partner we continuously improve the Region's long-term value to customers, employees, shareholders and society. We are a preferred employer, an environmentally conscious, profitable forest products business.

Our northeast Oregon region is proud to employ approximately 850; nearly 20% of our work force is women, and we are pleased to provide a full benefit package and good wages. In 2001 our wage/benefit package totaled \$36,548,265 with an average annual wage of \$33,826 per employee.

BOISESM

Building Solutions, Wood Products

BC 038728

Welcome
to the
FAIR



Investing in our sustainable forests
Investing in our manufacturing facilities
Investing in local communities

In northeast Oregon, **BOISE**
contributes to over 50 civic,
educational and philanthropic
organizations.

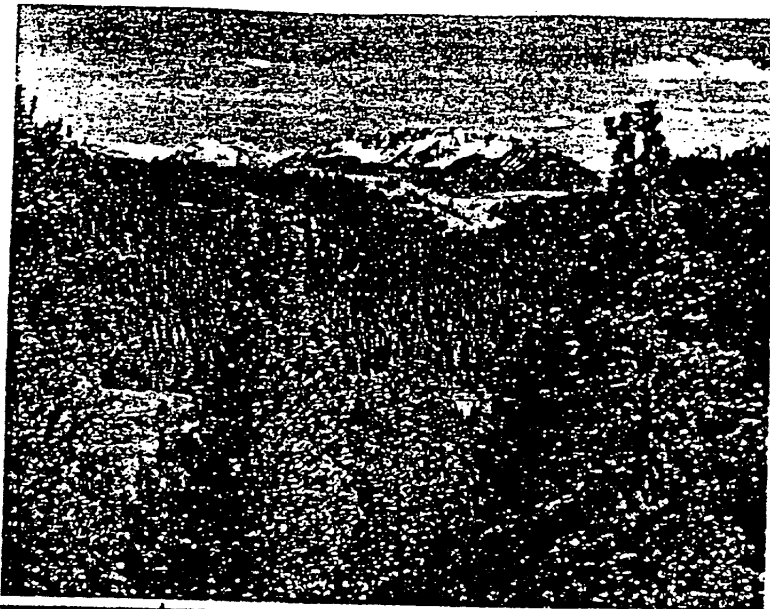
BOISESM

Building Solutions, Wood Products

www.bc.com

BC 038729

It's a forest out there ... in *Fact* it's a



CERTIFIED, SUSTAINABLE FOREST

Fact:

INDEPENDENT AUDIT - Boise's NE Oregon forest practices were audited by the world-renown, independent accounting firm of PricewaterhouseCoopers LLP.

Fact:

SUSTAINABILITY CERTIFIED - PricewaterhouseCoopers LLP certified Boise's full conformance with American Forest & Paper Association's Sustainable Forest Initiative, principles that integrate the sustainable growing & harvesting of trees with protection of wildlife, plants, soil & water quality.

Fact:

TECHNICAL EXPERTISE - The audit team included experts in wildlife & range management, forest engineering & planning, and silviculture, the science of growing trees.

Fact:

GOOD MANAGEMENT PRACTICES - The audit reported numerous examples of Boise's exemplary management practices.

Boise's forests in Northeast Oregon are **CERTIFIED** to be in full conformance with American Forest & Paper Association's Sustainable Forest Initiative.

**CERTIFIED,
SUSTAINABLE
FORESTS**



Fact We Are Very Proud Of Our Forests.

BOISESM

Building Solutions, Wood Products

www.bc.com

BC 038730

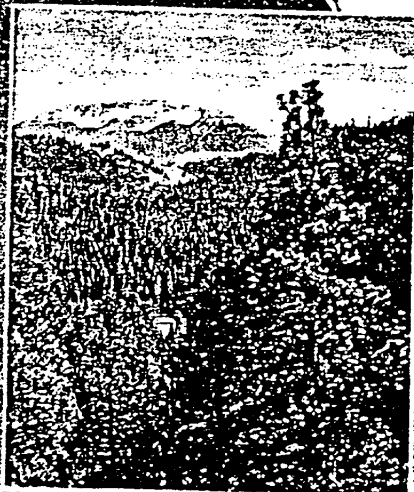
PENDLETON ROUNDUP

TRADITION

Since 1910

BOISE'S TRADITION

in Northeast Oregon



In addition to Boise's tradition of investing in local communities, we are proud of our tradition of
GOOD FOREST STEWARDSHIP.

Our forests are
CERTIFIED SUSTAINABLE
by independent third-party audit and
conform to the Sustainable Forest Initiative
principles, integrating the sustainable growing
and harvesting of trees with protection of
wildlife, plants, soil & water quality.

Boise's 305,000 acre
CERTIFIED SUSTAINABLE forest
in NE Oregon is backed by the
Wallowa Mountains.

Each year these forests produce
enough timber on a sustainable
basis to build 3,000
average-sized homes and a
variety of other wood products.

BOISESM

Building Solutions, Wood Products

www.bc.com

BC 038731

Welcome
to the
**Miners
Jubilee**



Investing in our sustainable forests
Investing in our manufacturing facilities
Investing in local communities

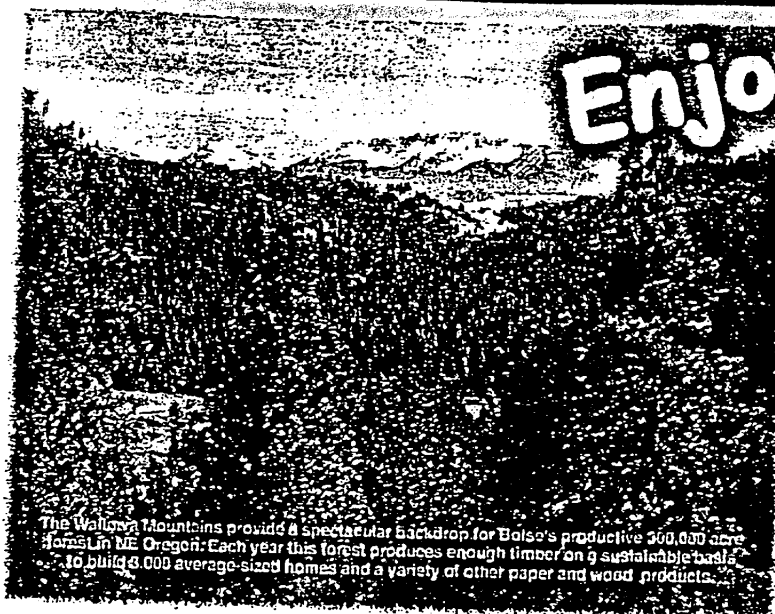
In northeast Oregon, **BOISE**
contributes to over 50 civic,
educational and philanthropic
organizations.

BOISESM

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BC 038732



The Wallowa Mountains provide a spectacular backdrop for Boise's productive 300,000-acre forest in NE Oregon. Each year this forest produces enough timber on a sustainable basis to build 6,000 average-sized homes and a variety of other paper and wood products.

**YOUR VISIT TO
OUR FOREST**

And...
Thanks

For Being
**Responsible
Guests**

Due to
**EXTREME
FIRE
DANGER**

Boise
may limit
public access,
campfires,
and firewood
cutting.
Call
541-962-2045
for current
information.

HERE ARE A FEW THINGS YOU CAN DO TO HELP:

Rules Of The Road... Respect the Noregaard, Shamrock, and Catherine Creek travel restrictions and drive only on roads designated as open within those areas. The Noregaard travel restriction is in effect from Aug. 21-Nov. 25, 2002; Shamrock from Aug. 1-Dec. 9, 2002; and Catherine Creek from Aug. 21, 2002-June 15, 2003. Maps are available at the Oregon Dept. of Fish & Wildlife at 65495 Alder Slope Rd., Enterprise, or 107 20th, La Grande.

Cleanliness is next to... Leave a clean camp and pack out all garbage.

Don't Cut 'Em... Standing dead trees are important habitat for non-game species like woodpeckers and owls, so please don't cut them!

Get the Info... Help us collect data. Bird hunters should place bird wings in collection barrels. Big game hunters should stop by the Oregon Department of Fish & Wildlife for collection bags in which to place samples.

Weeds...Yuck... We're working to control noxious weeds on our properties, so use only certified weed-free hay.

It's A Forest Out There... Drive safely and don't block gates or roadways. Remember that our forests are working timberlands and you may encounter a 40-ton truck hauling logs to one of our mills.

**Have A
Great
Hunt!**

BOISESM

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BC 038733

INVESTING IN THE

FUTURE

Boise's 2002

SCHOLARSHIP RECIPIENTS



KYLEE GRESHAM
Elgin HS
Daughter of
Steven [Studmill]
& Kanda Gresham



KACIE McDONALD
Elgin HS
Daughter of
Tom [Plywood]
& Sheri McDonald



LARINDA PORATH
New Plymouth HS
Daughter of
Royce Porath
[Idaho Specialties]



STEPHEN MANDZAK
Carnegie Mellon U.
Son of
John [Timberlands]
& Patricia Mandzak



SHERI RYSDAM
Eastern Oregon U.
Daughter of
Douglas [Elgin PW]
& Cecilia Rysdam



JESSICA DOWDY
Linfield College
Daughter of
Steve [LG Sawmill]
& Teresa Dawdy



KERI RANFT
Horseshoe Bend HS
Daughter of
William [BMDD-Boise]
& Kelly [Riverbend
Mfg] Ranft



SKIP HINTON
Central Oregon CC.
Son of David
[LG Sawmill] &
Pat Hinton



SHAE PRINCE
Union HS
Son of
Darwin [Particleboard]
& Ronetta Prince



RETHA SHIRLEY
Oregon Inst. of Tech.
Daughter of
Larry [LG Log Yard]
& Linda Shirley



TYLER DAVIS
Elgin HS
Son of
James [Particleboard]
& Pamela Davis



JORDAN SPIKES
Oregon State U.
Son of
Rod [Studmill] &
Evelyn Spikes

At Boise, we know the importance of
INVESTING IN THE COMMUNITY
INVESTING IN THE ENVIRONMENT
INVESTING IN THE FUTURE.

We are pleased to award scholarships totaling \$5,900 to these
FUTURE STARS OF LEADERSHIP.

BOISESM

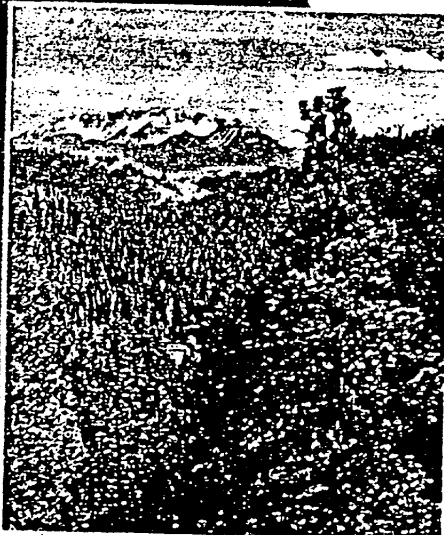
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www.bc.com

BC 038734

Shriners 50 year TRADITION East-West Game

BOISE'S TRADITION In Northeast Oregon



Boise's 305,000 acre
CERTIFIED SUSTAINABLE forest
in NE Oregon is backed by the
Willowa Mountains.

Each year these forests produce
enough timber to build 3,000
average-sized homes and a
variety of other wood products.

In addition to Boise's tradition of investing in local
communities, we are proud of our tradition of
FOREST STEWARDSHIP.

Our forests are
CERTIFIED SUSTAINABLE
by independent third-party audit and
conform to the Sustainable Forest Initiative
principles, integrating the sustainable growing
and harvesting of trees with protection of
wildlife, plants, soil & water quality.

BOISESM

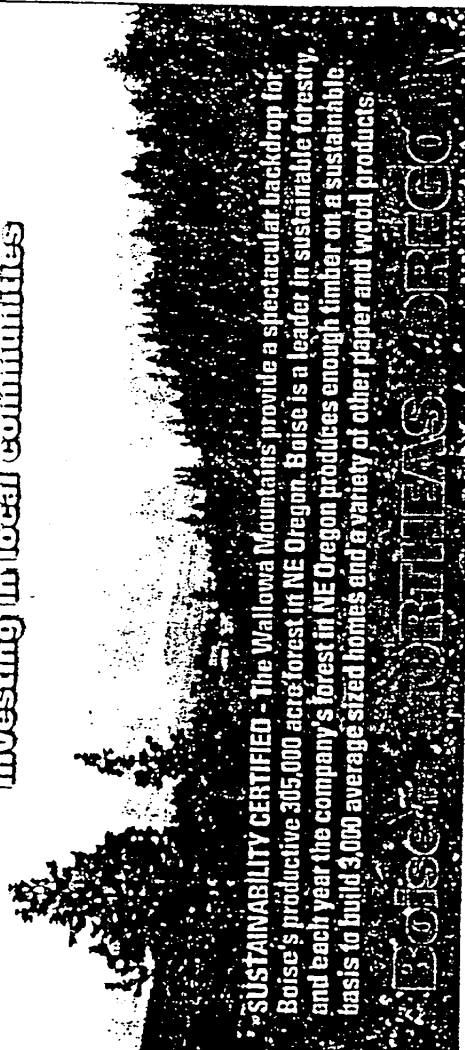
Building Solutions, Wood Products

www.bc.com

BC 038735

BOISE

Investing in our sustainable forests
Investing in our manufacturing facilities
Investing in local communities



SUSTAINABILITY CERTIFIED - The Wallowa Mountains provide a spectacular backdrop for Boise's productive 305,000 acre forest in NE Oregon. Boise is a leader in sustainable forestry, and each year the company's forest in NE Oregon produces enough timber on a sustainable basis to build 3,000 average sized homes and a variety of other paper and wood products.

BOISE PARTICLEBOARD

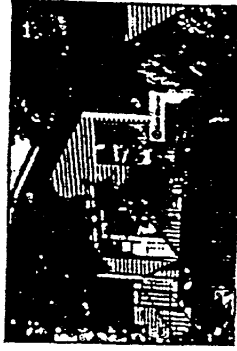
1925	Mount Emily Lumber sawed its first log in La Grande	1971	Second production line added at Particleboard Plant
1957	Boise Payette and Cascade Lumber companies merged to form Boise Cascade	2002	Currently - 305,000 acres of timberlands, Elgin Plywood and Studmill facilities, the Particleboard Plant and Sawmill complex in La Grande, providing approximately 800 Family-Wage jobs
1961	Purchased the Western Studmill in Elgin		
1964	Plywood Plant, Elgin opened		
1966	Particleboard Plant, Island City start-up		

BOISE™

Building Solutions, Wood Products

www.bc.com

ADMINISTRATIVE and TIMBERLANDS. Located in the Regional office at 1917 Jackson, La Grande.



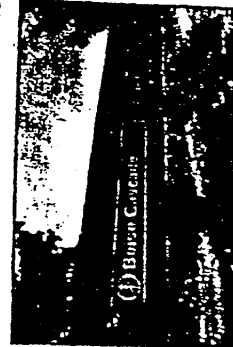
PARTICLEBOARD PLANT. Our high-quality particleboard is used to manufacture TV cabinets, office and kitchen cabinetry, and construction materials such as shelving, counter tops and stepping.



ELGIN COMPLEX. The high-end plywood produced at Elgin is used in home construction. The Premium Cut 2x4 made at the Elgin Studmill is sold to The Home Depot.



LA GRANDE SAWMILL. The sawmill's value-added lumber is used to make door and window moldings. Our primary customers are window manufacturers such as Pella and Marvin and businesses that produce components for them.

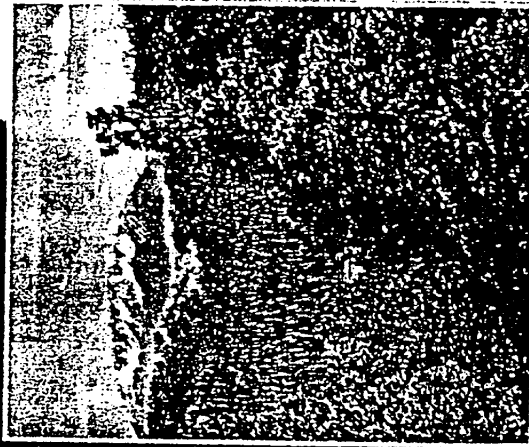


BC 038736

Good-Luc **ATHLETES**

BOISE'S TRADITION

in Northeast Oregon



In addition to Boise's tradition of investing in local communities, we are proud of our tradition of **GOOD FOREST SUSTAINABILITY**

Our forests are **CERTIFIED SUSTAINABLE** by independent third-party audit and conform to the Sustainable Forest Initiative principles, integrating the sustainable growing and harvesting of trees with protection of wildlife, plants, soil & water quality.

Boise's 305,000 acres **CERTIFIED SUSTAINABLE** forest in NE Oregon is backed by the Wallawa Mountains.

Each year these forests produce enough timber to build 3,000 average-sized homes and a variety of other wood products.

BOISESM

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BC 038737

Hey Kids!

"WOOD" YOU BELIEVE...

There are more than 5,000 things made from trees.

Have fun with these games and learn about our renewable forests and recyclable wood products.

Forests grow in all areas of the U.S. If these trees were put together limb to limb, they would take up a space equivalent to one third of the country.

33% FOREST LAND

True or False?

1. More paper is recycled in the U.S. then is sent to landfills.
2. There are more trees in the U.S. today than there were 75 years ago.
3. Ice cream, shampoo and toothpaste all contain a wood fiber called cellulose.
4. Rayon, a fabric used in today's clothes, is made from wood.
5. Almost a third of the world's total land area is covered by forests.
6. The forest industry in America plants more trees in the forest than any other entity.

ANSWERS: The answer to each of the above is - True!

T/F

☐
☐
☐
☐
☐
☐

Draw a line to complete the statement.

1. The number of seedlings planted each year is

A. provide wildlife habitat.

2. Trees help our atmosphere by

B. the world's demand for paper is much larger than can be provided through recycling. Wood and other fibers must also be used to meet the remaining demand.

3. Forests not only provide wood for the products you use every day, they also

C. 1.5 Billion.

4. We can't make all the paper we use from recycled material because

D. consuming carbon dioxide and releasing oxygen.

8+ Y 1 0-2 7-1 'S33MSNY

Did You Ever Stop To Think...

...HOW IMPORTANT PAPER IS? WHAT WOULD WE DO WITHOUT IT? JUST TAKE A LOOK AROUND YOUR HOME AND CLASSROOM. HOW MANY THINGS CAN YOU FIND THAT ARE MADE OUT OF PAPER? CAN YOU FIND THESE OBJECTS HIDDEN IN THE FOREST PICTURE BELOW? GUESS WHAT? THEY ARE ALL MADE OUT OF PAPER!



Thanks to TAPPI, Technical Association of the Pulp and Paper Industry for providing games and information.

Word Search

DIRECTIONS: Find the list of forest related words in the grid of letters. Circle each of the words you find. Good luck!

Paper

Trees

Nature

Recycle

Sustainable

Pulp

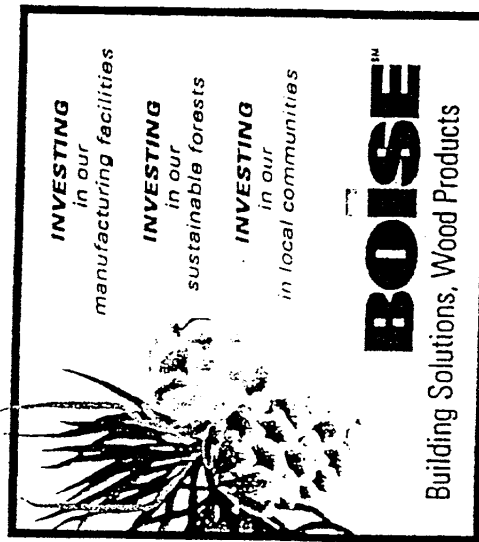
COSY GONRPMC
DPULPBLENBE
MYSFOZHWCWIO
ONTOAFEYONL
BEAZFGBCBEH
LDIAETILZDC
HXNATUREFWD
CMAISIVEVSC
RBBTRPAPEROR
ZILRAZFGASSB
ANEUEIGFEWR

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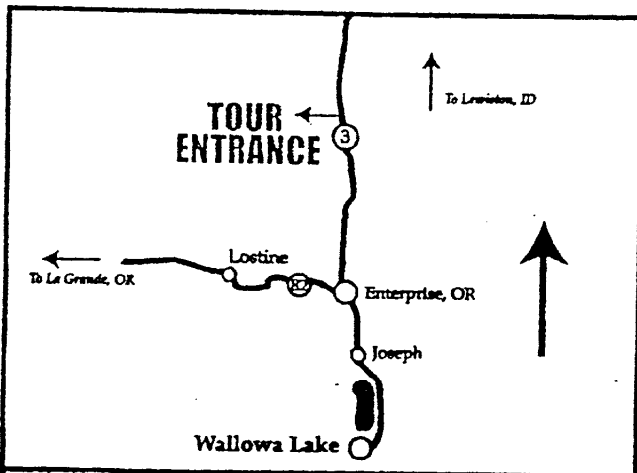


While
Enjoying
Chief Joseph Days

TAKE THE TOUR

and take the whole family

Boise's SCENIC DRIVING TOUR and NATURE HIKE



Pick up your copy
of the Driving Tour
and Nature Hike
booklet at:

Wallowa County
Chamber of Commerce
836 W. North St., Enterprise
Phone 541-426-4622
Driving Tour Entrance
Or Phone 541-962-2080

Take **THE FAMILY**
Take **THE TOUR**
and Take **YOUR BEST SHOT**

Pack up the family, a picnic and your camera. Enjoy a beautiful drive and nature hike through Boise's working forest in northeast Oregon. You'll view gorgeous wildflowers, many species of birds and wildlife and learn how Boise integrates the sustainable growing and harvesting of trees with protection of wildlife, plants, soil and water quality.

**Our Forests Are
CERTIFIED SUSTAINABLE**

BOISESM

Building Solutions, Wood Products

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CERTAINTEED CORPORATION,)	
)	
Plaintiff,)	Civil Action No. 02-2677
)	
v.)	Hon. William H. Yohn
)	
BOISE CASCADE CORPORATION,)	
)	
Defendant.)	
_____)	

EXPERT REPORT OF GREG BROOKS

April 25, 2003

BOISE'S USE OF THE TERM "BUILDING SOLUTIONS" AS IT RELATES TO CERTAINTEED'S BUILDING SOLUTIONS PROGRAM

BACKGROUND

I am president and CEO of the New Albany, Ind.-based Building Supply Channel, Inc. (BSCi). BSCi produces training programs for employees at retail building material firms, and conducts seminars for employees and executives at all levels of the building products channel.

I have 35 years' background in the building materials business. I spent 20 years working for retailers ranging from single-market independents to a top 10 chain, in operations, sales, management, and training. I am the author of two employee training manuals published by the Indianapolis-based National Retail Hardware Association / Home Center Institute.

In 1991, I joined *ProSales* magazine, a trade publication serving the construction supply segment of the channel throughout North America, published by Hanley-Wood, LLC in Washington, D.C. I served as a contributing editor, as senior editor, then as chief editor from 1995 to 1999. Since 1997, *ProSales* has been the industry's leading business magazine, with approximately 40,000 readers. Hanley-Wood is the leading U.S. trade publisher serving the residential construction marketplace; the company also publishes *Builder*, the official magazine of the National Association of Home Builders.

In 2000 - 2001, I served as editor-at-large for *Home Channel News*, the building products industry's leading news magazine with 51,000 readers, published by New York-based Lebar-Friedman, Inc. During my tenure as an editor, I interviewed, visited, and held discussions with over 2,000 retailers, distributors, and manufacturers throughout North America on topics ranging from current issues to industry best practices.

One of my primary editorial responsibilities was to research and report on industry trends. I have conducted extensive research into the history of the industry. I oversaw annual surveys that gathered data such as company size, primary business focus, products and services offered, perceived threats and opportunities, and industry affiliations. In 1998, I oversaw a research study into trends in professional building product distribution (segments serving residential contractors as opposed to consumers) conducted by PricewaterhouseCoopers, LLC and funded by Hanley-Wood.

Since 1998, I have spoken to or conducted seminars for over 2,500 industry executives, including both Boise and CertainTeed, on the topic of building product distribution trends. My past clients include home builders, remodelers, retailers, wholesalers, manufacturers, regional and national associations, investment bankers, and academic institutions.

I currently serve as a member of the steering committee of the Harvard University Joint Center for Housing Studies' Remodeling Futures program, and as an advisor to a Joint Center task force conducting a major research study into industry distribution trends.

See Exhibit A attached for a list of publications I have authored over the past ten years.

the building
supply channel, inc

po box 6741

wolf lake boulevard

albany, in 47150

BSCipro [272.4776]

812.944.6947 [fax]

www.BSCipro.com

INDUSTRY STRUCTURE

Home builders. According to the Harvard Joint Center for Housing Studies, there are approximately 150,000 single-family home builders in the U.S. They are typically divided into three categories: high-volume production builders building tract or semi-custom homes, custom home builders, and small "spec" builders.

The industry is consolidating rapidly. According to *Builder*, market share held by the top 100 builders grew from 13% to 28% between 1993 and 2001. Builders who build more than 100 homes per year reportedly now build nearly 70% of new homes in the U.S. A variety of factors are contributing to consolidation, but in my opinion, the most important is the increasing domination of what is often referred to as the "white collar" or "briefcase" builder.

Thirty years ago, most home builders came up through the trades. Today, they are more likely to have college degrees—often advanced degrees—in business, finance, engineering, or marketing. Among the top 100, many are publicly-held companies managed by professional businesspeople whose sophistication has given them a significant competitive advantage over their smaller rivals.

Subcontractors. The exact number of tradespeople serving home builders is unknown both because of the influx of foreign labor (some of whom are in the U.S. illegally), and because many tradespeople, particularly in carpentry, also operate independently as remodelers or home builders. Anecdotally, I have heard that the number is over 500,000.

Most subcontractors specialize in a single trade—e.g., carpentry, roofing, siding, drywall, or insulation. Carpenters, roofers, drywallers, and siders tend to provide labor only and rely on outside suppliers for materials; depending on the product lines and the region, purchasing decisions may be made by the subcontractor or the builder. Electricians, plumbers, and insulation contractors often operate specialty supply houses and inventory their own materials.

Remodelers. According to the Harvard Joint Center for Housing Studies, there are approximately 200,000 established remodeling firms in the U.S. (commonly referred to as "organized remodelers"), plus 600,000 self-employed tradespeople who engage in remodeling activity as independent contractors. Only 1% of remodelers have annual sales over \$1 million, but account for over one-third of projects completed.

Remodelers are frequently divided into three categories: full-service (e.g., room additions or kitchen remodels), specialty (e.g., roofing or siding replacement), and handyman services. Among full-service remodelers, there is some crossover into custom home building; specialty remodelers sometimes serve as subcontractors.

Larger remodeling firms normally buy from pro-oriented suppliers such as lumberyards or specialty distributors, while smaller contractors may buy from pro-oriented suppliers or warehouse retailers such as Home Depot or Lowe's.

Retailers. The retail level of the channel is commonly divided into two segments: 1) Warehouse retailers or home centers whose primary focus is consumer trade, and 2) construction suppliers or "pro dealers" who focus on home builders, remodelers and subcontractors. Warehouse retailers also serve professional customers while most construction suppliers also serve consumers; both also serve commercial / industrial accounts.

Construction suppliers tend to organize their product offering around phases of a residential construction project—i.e., structural framing, mechanical systems, or exterior cladding such

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new albany, in 47150

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as roofing and siding. Lumberyards offer the broadest range of materials, but their primary focus is naturally on wood products such as lumber and millwork (e.g., windows, doors, and trim). Specialty distributors may focus on roofing, siding, drywall (often combined with insulation since the two are installed in sequence), plumbing, electrical, etc.

The construction supply segment of the channel is considerably blurred, in part because many firms who sell the same products and perform the same services as retail lumberyards are not classified as retailers under NAICS codes. They may be listed as wholesale distributors, manufacturers (e.g., roof trusses or vinyl windows), or subcontractors, which makes it impossible to accurately determine how many firms are functionally in the same business.

Anecdotally, most sources believe there are 15,000 to 17,000 firms operating full-line lumberyards. My own independent research indicates that, including lumberyards, there may be as many as 85,000 U.S. firms whose primary business focus is supply materials (with or without labor) to residential building contractors.

The consumer-focused segment of the market is highly consolidated, dominated by three firms: Home Depot, Lowe's, and Menards. According to Home Channel News, in 2001 these three companies combined accounted for over 62% of gross sales of the top 500 retailers.

Construction supply is fragmented by comparison, but appears to be "polarizing" into a handful of extremely large multi-regional chains and single-market independents. The largest pro dealer in *Home Channel News's* 2001 rankings, Carolina Holdings, reported over \$2.4 billion in gross sales. Only four firms broke the \$1 billion mark, however, while 53 reported sales between \$100 million and \$999 million. No. 350 on the list reported sales of only \$18 million.

Wholesale distributors. Wholesalers are typically divided into two categories: building materials and hardlines (e.g., hardware, plumbing and electrical products, etc.). Each segment includes independent wholesale distributors, buying groups that are separate entities operated for the benefit of their member shareholders, and co-ops wholly owned by their retail members.

Wholesale distribution channels are also extremely blurred. As retail consolidation has reduced the size of their potential target market, many wholesalers have begun to bypass retailers and sell directly to building contractors.

Anecdotally, the number of wholesalers focusing on contractors appears to be growing. Not surprisingly, however, this is a major source of friction between wholesalers and retailers, so exact numbers are difficult to pin down.

In *Home Channel News's* 2001 distributor rankings, 15.3% of hardlines wholesalers and 18.7% of building material wholesalers reported that they sell direct to contractors. But in the 1998 PricewaterhouseCoopers study, which was conducted anonymously, 63% of those who identified themselves as wholesalers said contractors are their primary business focus.

Manufacturers. There are over 2,350 firms listed in *Buikler's* 2002 Buyer's Guide; Hanley-Wood believes this group encompasses all or nearly all manufacturers operating nationally, as well as all significant regional players.

Consolidation is occurring in all segments, but is generally thought to be occurring most quickly among producers of commodity lumber and wood panel products. The asset-intensive nature of the business, price fluctuations inherent in commodity sales, and declining availability of raw material due to changes in forest management practices have all made it more difficult for small players to compete.

the building
supply channel, inc

po box 6741

28 wolf lake boulevard

new albany, in 47150

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812.944.6947 [fax]

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There has also been a trend in recent years toward vertical integration: manufacturers acquiring distributors or developing new distribution networks, particularly in cabinets, doors, and windows. In many cases, the purpose is to serve high-volume builders directly, which makes this a source of friction with existing customers. Manufacturers are naturally reluctant to speak publicly on the topic, so exact figures are difficult to ascertain.

BUYING PRACTICES

Retailers. Not surprisingly, smaller companies tend to buy through distribution while larger firms buy more of their materials directly from manufacturers. But regardless of size, nearly all retailers buy at least some products through distribution.

Hardlines are most likely to be purchased through a middleman. The retailer often has contact with the manufacturer regarding product specifications and ancillary services, but is not involved in purchasing decisions; the middleman acts as an outsourced purchasing agent.

Building materials are more likely to be purchased directly from the manufacturer depending on the retailer's size and, in the case of commodity lumber and panel products, proximity to producing regions.

As a rule, retailers with annual sales of \$25 million or less buy nearly all of their commodity materials through distribution. Larger dealers buy more products direct, but even the largest chains frequently buy through distribution in order to take advantage of the vendor's logistics capabilities in splitting deliveries among multiple locations. Warehouse retailers are most likely to buy direct; the largest often maintain their own distribution centers to provide logistics services to their retail stores.

When buying hardlines or non-commodity building materials (which would include CertainTeed's lines and Boise's engineered wood products), the purchaser nearly always makes a commitment to a single brand; he or she may switch brands but rarely mixes multiple brands in inventory unless a product is not available in all of the purchaser's trading areas.

In lumber and panel products, larger purchasers (either a retail chain or a distributor) often negotiate "program buys" in which terms are agreed to in advance and major purchases are concentrated with a single vendor. But buyers also frequently make "spot buys" on the open market to fill gaps in their inventory or take advantage of market opportunities. Some buyers prefer to spread purchases evenly among a pool of preferred vendors.

Regardless of who makes the purchasing decision, purchasing agents at all levels of the channel are almost without exception experienced key employees with deep knowledge of both the products and services they buy and those offered by the vendors available to them.

Home builders. Most of the products builders buy are purchased installed from a subcontractor or a supplier offering installation services. The most common exceptions are framing materials (lumber and panels) and millwork (doors, windows, and trim). A primary reason is that both are frequently prefabricated into components somewhere in the distribution channel—e.g., lumber made into roof trusses or doors prehung in frames.

When materials are purchased separately from labor, the purchasing decision may be made by the builder or the subcontractor. In general, the lower the overall cost, the more likely it is that the subcontractor will make the purchase.

In framing materials, builders typically make the decision due to the relatively high cost, but not always; particularly in Western markets, subcontractors frequently quote the builder a

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"turnkey" price and buy materials themselves. Builders nearly always choose their own doors and windows since both products are highly visible and can affect the marketability of the home.

According to *Builder*, over 80% of the top 1,000 home builders buy at least some products directly from the manufacturer. For the most part, however, the practice is limited to products that arrive at the jobsite in the manufacturer's original packaging (such as appliances, cabinets, and plumbing or lighting fixtures) as opposed to those that are prefabricated in the channel.

In many product categories, manufacturers offer incentive programs to builders to encourage loyalty to their brands. The builder buys through local distribution at prices negotiated with each individual supplier, then receives a rebate directly from the manufacturer based on total purchase volume during an agreed period of time.

Subcontractors. Particularly in urban markets, subcontractors tend to specialize in a single trade: carpentry, roofing, siding, plumbing, or electrical work, for example. Those who work with product lines that require a large capital investment to inventory tend to buy from suppliers who do not install the products they sell. Subcontractors who work with product lines that are less capital-intensive often become suppliers themselves.

The structural framing materials manufactured by Boise would likely be purchased from a supplier, typically a lumberyard. Among CertainTeed's product lines, roofing, siding, and windows would be most likely to be purchased from an outside supplier, while insulation, decking and fencing, ventilation products, and piping would likely be distributed through subcontractors who also serve as suppliers.

Dedicated suppliers also sell these product lines, of course. Subcontractors may buy them from lumberyards, specialty distributors, or warehouse retailers / home centers.

Remodelers. Buying practices among established remodeling firms are similar to those of home builders: Most products are purchased from construction suppliers rather than warehouse retailers, and those related to specialty trades such as roofing, siding, electrical, or plumbing are purchased installed.

Tradespeople who also contract remodeling projects independently may buy from construction suppliers or warehouse retailers, but are more likely to buy from warehouse retailers.

The primary difference in purchasing practices between home builders and remodelers is that the homeowner plays a more significant role in buying decisions in a remodeling project, which gives remodelers less control over which vendors they choose.

Design professionals. Architects and designers often specify brands in the building plans. As a rule, these recommendations are most effective when they involve products that are highly visible (e.g., windows and entry doors) or require building code approvals (e.g., framing connectors). As a result, manufacturers of these products often market aggressively to the design community.

In general, however, there are very few products for which there are no equivalent alternatives. Particularly when a builder, remodeler, or subcontractor is the final decision-maker (as opposed to a home buyer or homeowner), construction suppliers are frequently able to sell alternative brands if they cannot get the specified brand.

The reason is that relationships between contractors and their suppliers normally encompass a broad range of products and services, and is generally more important to the customer than any single product line.

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USE OF THE TERM "BUILDING SOLUTIONS"

In my opinion, the use of the term "Building Solutions" is highly unlikely to cause confusion between Boise and CertainTeed, for six reasons:

1. Common use. The term "building solutions" is common throughout both residential and commercial construction. A search at Google.com for the combination of the terms "construction" and "building solutions" yielded 9,080 results, including building material retailers, home builders, remodelers, and modular building manufacturers.

Among retailers who would be highly likely to be familiar with both CertainTeed and Boise, for example, Secor Lumber in Savannah, N.Y. (www.secorlumber.net) uses the term "Building Solutions Group" to market what appears to be a referral service to help builders find subcontractors and complementary suppliers when planning a project. Requarth Lumber in Dayton, Ohio owns a framing subcontractor called Farco Building Solutions.

The term "building solutions" or variations on it is also used as a marketing tagline by a number of major manufacturers with whom builders, remodelers, and retailers would almost certainly be familiar.

NuTone is a leading national manufacturer of ventilation products for residential buildings. Its powered attic ventilators, gable fans, and whole ventilators compete directly with products manufactured for identical applications by CertainTeed. Full-line lumberyards, specialty distributors, and warehouse retailers would all be likely to stock and sell these product lines.

NuTone's tagline is "Building Solutions for Today's Lifestyles."

<http://www.nutone.com>

Autodesk is the leading world provider of software for builders, designers, and engineers. Its AutoCAD computer-aided design application is the standard for design professionals in both residential and commercial construction, which makes it likely that nearly all builders and remodelers would be familiar with the company. Many building material retailers offer design and engineering as part of their estimating services for builders and remodelers. They would also be likely to own AutoCAD, and thus be familiar with Autodesk.

Autodesk uses the term "solutions" to differentiate its product families. AutoCAD is part of its "Building Solutions" software. Others include "Digital Media Solutions," "Infrastructure Solutions," "Manufacturing Solutions," and "Wireless Data Solutions."

<http://usa.autodesk.com/adsk/servlet/section1?siteID=123112&id=331041&wac=IL18067>

GE Modular Space is a General Electric company that manufactures modular buildings. Home builders are one of its primary target markets—they use its buildings as on-site construction offices—and thus would be likely to be familiar with the company.

GE Modular Space uses the tagline, "Building Solutions for Your World."

http://www.modspace.com/prod_serv/designer_floor.html

2. Different use. Judging from the information at its Web site, CertainTeed's Building Solutions program is a "loyalty" program for home builders, remodelers, design professionals, and building inspectors.

Program details vary for each target audience, but there are three general components: 1)

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education and specifications, 2) promotional materials and marketing support, and 3) volume purchase incentives for home builders and remodelers. Of the three, education and specifications would be relevant to retailers, but there is no indication that the Building Solutions program is marketed to them.

I found no evidence that CertainTeed uses the term "Building Solutions" for any purpose except to identify this program. I have never seen the term on its products, and have been informed that the company does not use the term on its packaging.

To my understanding, Boise uses the term "solutions" strictly to differentiate its business units—Office Solutions, Paper Solutions, and Building Solutions—and not to identify any specific program offered to its customers or end users of its products.

3. Non-competing products. Boise primarily manufactures what are considered commodity structural wood products. They are sold primarily by lumberyards and used primarily by framing subcontractors.

Most of CertainTeed's residential product lines would be considered specialty product lines in the thermal and moisture protection category. They are sold by both lumberyards and specialty distributors, but normally installed by subcontractors who do not install structural framing materials—i.e., roofers, siding contractors, or insulation contractors.

The two companies' product lines do not compete or overlap in any way that I can see. As a result, it seems unlikely that sellers or users of those products would confuse the two.

4. Non-overlapping exposure. It appears to be very unlikely that CertainTeed's and Boise's respective audiences would be exposed to the use of the term "Building Solutions" by both companies.

ProSales is aimed specifically at construction suppliers; to my knowledge, builders and remodelers do not qualify to receive the magazine. In Boise's ads in the September, 2002 and April, 2003 issues, "Building Solutions" is noticeable but clearly subordinate to "Boise." The type is small; the typeface is both generic and identical to the words "Engineered Wood Products" immediately below "Building Solutions."

If a reader noticed the term at all, I believe it would have very little meaning unless he or she was familiar with Boise's other divisions and understood the context. In that case, the combination of terms would suggest the division (Building Solutions) and the specific product group within it (Engineered Wood Products), and could not, in my opinion, be interpreted as any sort of program.

CertainTeed also advertises in *ProSales*. In a sampling of six issues from August 2002 to April 2003, I found four ads for products manufactured by CertainTeed. None contains the term "building solutions" either as a formal program or as a generic term.

Unless retailers specifically sought out information on CertainTeed's Building Solutions program—and they would have little reason to do so since they apparently aren't eligible to participate in it—it seems unlikely that they would encounter the term casually.

As a result, it appears that retailers receive minimal exposure to Boise's use of the term "Building Solutions" and no exposure at all to CertainTeed's use of the term. My opinion is that they would have little or no opportunity to confuse the two.

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There also appears to be little opportunity for confusion among contractors. I reviewed four recent issues of *Builder* magazine: January and December 2002, and March and April, 2003. CertainTeed was an advertiser in all four, but I did not find the term "Building Solutions" in any of its ads. I also did not find a Boise advertisement in any of the four issues.

5. Customer sophistication. When retailers and their suppliers make purchasing decisions, they enter into contractual agreements that, in the majority of cases, are intended to result in long-term relationships. Among the product lines manufactured by Boise and the majority of those manufactured by CertainTeed, retailers would typically maintain inventory worth at least tens of thousands of dollars at each facility they operate.

As a result, the purchasing agent's position is considered second only to the general manager position in its required qualifications. At all levels of the channel, buyers are almost invariably highly-experienced career professionals who would be familiar with Boise and CertainTeed (and their competitors). Buyers who are new to the position almost always have industry background in other positions, and would typically work under close supervision by an experienced buyer or manager.

Moreover, prior to making a commitment, prospective customers would invariably be in direct contact with each company's respective sales representatives, and would engage in detailed negotiations covering every aspect of the products and services offered.

As a result, I believe it would be almost impossible for a current or prospective customer at the retail or wholesale level of the channel to confuse the term "Building Solutions" as it is used by Boise and CertainTeed.

Regarding home builders and remodelers, so many manufacturers offer incentive programs that any firm large enough to qualify for CertainTeed's Building Solutions program would almost necessarily be familiar with incentive programs in general, and thus sophisticated enough not to confuse CertainTeed's program with Boise's use of the term.

According to the brochure for builders posted at CertainTeed's Web site, participants must build at least five homes per year to qualify. Given new home prices, a home builder participant would typically generate at least \$500,000 per year in gross sales volume.

Regarding remodelers, the minimum purchase qualification listed at CertainTeed's Web site is \$30,000 per year. Remodelers who generate that kind of purchase volume in the product lines CertainTeed offers (which are typically only a portion of the materials required to complete a project) would normally be categorized as organized remodeling firms rather than self-employed tradespeople.

Given the volume requirements, participants in CertainTeed's program would in most cases be established businesspeople. It seems unlikely that they would be able to generate the volume required to participate without the sophistication to differentiate CertainTeed's and Boise's use of the term "Building Solutions."

6. Well-known brand names. Both Boise and CertainTeed are established brands that are nationally known at all levels of the industry, and have been for decades. In my opinion, anyone qualified to sell, purchase, or install their respective products would be highly likely to have heard of both companies and thus highly unlikely to confuse the two.

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I am being compensated for producing this report at the rate of \$175 per hour. I have not testified at trial or by deposition within the past four years. I reserve the right to supplement this report as I obtain further information.

A handwritten signature in black ink, appearing to read 'Greg Brooks', with a long, sweeping underline that extends to the right.

Greg Brooks

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EXHIBIT A: PUBLICATIONS AUTHORED BY GREG BROOKS

- 1990: *Building Material Product Knowledge* training manual (co-author). Published by the National Retail Hardware Association / Home Center Institute, Indianapolis, Ind.
- 1992: *Remodeling Project Selling Guide* training manual. Published by the National Retail Hardware Association / Home Center Institute, Indianapolis, Ind.
- 1993: *Sealants and Adhesives* training manual and reference guides. Published by Geocel Corporation, Elkhart, Ind.
- Remodeling* magazine, feature article. Published by Hanley-Wood, LLC.
- 1991 - 2001: *ProSales* magazine. Approximately 150 feature articles and columns on a variety of topics including building product distribution trends, industry best practices, current issues, selling skills, and product knowledge. Published by Hanley-Wood, LLC.
- iHousing* magazine. Feature article on technology in the building materials industry. Published by Hanley-Wood, LLC.
- Window & Door* magazine. Feature article on building product distribution trends. Published by the National Glass Association.
- 1998: White paper: analysis of the findings of *The State of Professional Building Product Distribution*, PricewaterhouseCoopers, LLC.
- 2001 - 2002: *ProDealer* supplement to *Home Channel News* magazine. Approximately 15 feature articles and columns on a variety of topics including building product distribution trends, industry best practices, selling skills, and product knowledge. Published by Lebhar-Friedman, Inc.
- White paper: *Consolidation in the Construction Supply Industry, 1993 - 2001*. Published by the Building Supply Channel, Inc.

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Construction Basics training manual. Produced for James Hardie Building Products.

2000 – 2003: Approximately 35 training programs covering product knowledge, construction techniques, estimating, yard and warehouse skills for construction supply employees. Published by the Building Supply Channel, Inc.

2003: *Construction Supply*, quarterly training / professional development journal. Published by the Building Supply Channel, Inc.

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EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CERTAINTTEED CORPORATION,)	
)	
Plaintiff,)	Civil Action No. 02-2677
)	
v.)	Hon. William H. Yohn
)	
BOISE CASCADE CORPORATION,)	
)	
Defendant.)	
_____)	

EXPERT REPORT OF MICHAEL A. STEPNOWSKI

April 23, 2003



STEPNOWSKI
GENERAL CONTRACTORS

Wednesday, April 23, 2003

Report on the use of the term "Building Solutions"

I Michael A. Stepnowski am the President and General Manager of Stepnowski Bros. Inc (SBI) General Contractors. I am active in the General Building Contractors Association (GBCA) (The Phila. Chapter of the AGC) I currently serve as Chairman of the Board, Chairman of the Legislative and Government Operations Committee, serve on the Mentor-Protégé Initiative Advisory Board, serve on The Associated General Contractors of America (AGC) Equal Business Access Committee, and I am a member of the Carpenters' Company of Philadelphia. In the past I have served on The Pennsylvania Energy Conservation Committee, a PECO Energy Advisory Council and a Philadelphia Dept. of License and Inspection Business Roundtable Committee.

I have been employed by Stepnowski Bros. Inc. since 1976, throughout this time I have worked as an estimator and project manager whereas the duties included the purchasing of materials and services for building construction.

I have not published any articles or papers within the last ten years, nor have I testified as an expert witness in the last four years. I am to be compensated for my time in this matter at the rate of one hundred and sixty dollars per hour.

Stepnowski Bros. Inc. is a General Contracting company founded in 1976 that initially performed residential remodeling work, and now performs commercial, industrial, and institutional and government construction projects. As is typical of many general contractors SBI self performs its carpentry work, concrete and general trade work, and sub-contracts to others the specialty trades work. SBI's managing employees have extensive knowledge of building materials.

A General Contractor company in the Philadelphia area may be known as a Builder, Building Company, Building Corporation, Construction Company, Constructor, Contracting Company, Remodeler, or Remodeling Contractor.

I have been asked to explain how contractors purchase building materials, whether I had any familiarity with the term "building solutions", and whether I could identify any particular product with the term and whether multiple users and/or competitors use of the term would likely cause confusion as to a product's identity.



STEPNOWSKI

GENERAL CONTRACTORS

The criteria for purchasing of construction materials are varied. The standard is that the specifications are provided to the contractors by the client's design professional. At times they may be proprietary, with no substitutions allowed, at other times, "or equal" substitutions are permitted, subject to the approval of the design professional, and at times a performance specification is provided whereby builders are to provide a product that will perform to a client's specified expected results. When proposing material for use in a project when a design professional is not involved a contractor would normally specify materials based on past experiences and/or ask suppliers to recommend a product that is appropriate for use.

Initially I had no familiarity with the term "building solutions". I speculated that it is probably a catchphrase similar to "business solutions" used by accountants, payroll services and consultants, and "office solutions" that are used by office stationary and equipment suppliers.

On April 9, 2003 I performed an internet search using the MSN Search engine. A sampling of the listings follows.

Autodesk is a provider of software and service solutions to the building industry, and who list their products under "Building Solutions".

"Boise Building Solutions" which states that Boise is a manufacturer and distributor of building products, this page also lists Office Solutions, and Paper Solutions.

"Blazer Building Solutions, Inc." a manufacturer of wood framed wall panels for the building industry.

Certainteed which listed its "Building Solutions" programs for Builder, Remodeler, Design Professional, and Inspector, which can provide Product Solutions, Marketing Solutions, and Customer Satisfaction Solutions.

Davco Inc. is a company specializing in the erection of pre-engineered steel buildings who offer "Commercial Building Solutions" including "Pre-Engineered Building Solutions".

Elliot Lewis Corporation is a mechanical construction company who offer in the marketing of its services Building Automation, Construction, and Building Services which will "provide our clients with a total "building solution"...."

"Fusion Building Solutions" offer a complete system for the manufacture and erection of Insulated steel frame housing.



STEPNOWSKI
GENERAL CONTRACTORS

Honeywell a mechanical equipment manufacturer offers "Building Solutions" for building management systems.

ICF North a Division of Kerr's Forest Products & Construction Enterprises who provide "Insulating Concrete Form Building Solutions"

"Nisbet Brower Building Solutions" a building materials supplier who states that "Nisbet Brower strives to become the Preferred Solutions Provider for the Tri-State building industry."

I did not open the numerous other sites, and should note that I had failed to record how many results were found. A subsequent search on 4/16/03 retrieved 2,426,282 listings for "building solutions". It may be interesting to note that my search for "marketing solutions" yielded 3,008,620 search results, "office solutions" produced 3,444,434 and "business solutions" found 8,088,612.

An advanced search limiting results to one site per domain returned 17,736 for "building solutions", 47,240 for "office solutions", 163,478 for "marketing solutions", and 669,992 for "business solutions". These results seem to indicate that the "building" solutions slogan was becoming another business "solution", this one being marketed to the building industry.

No manufactured product was found that was in itself a "building solution". However marketers are promoting that their company's resources are "solutions" for those in the "building" industry and that these resources would help to solve their customer's problems. From software, through office, paper, product, marketing, customer satisfaction, pre-engineered building, commercial building, insulating concrete form, etc. "solutions" were offered for a myriad of "building" problems.

I questioned the Purchasing Manager, Construction Manager and the Estimator/Project Managers in SBI's employ as well as several other construction contractors and found that none were familiar with the term and no one associated "building solutions" with a particular manufacturer, product or service.

It is my professional opinion that "building solutions" is a catchphrase that's use has become common in the marketing of construction materials and services. That its use is not exclusively identifiable with any particular product, manufacturer or distributor but rather as a current marketing trend to not only sell a supplier's product and/or services but to also represent that the vendor is available to provide "solutions" to a variety of building industry related problems.

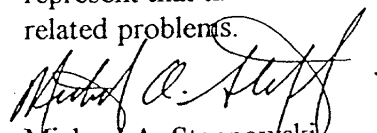

Michael A. Stepnowski
President

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CERTAINTIED CORPORATION,)

Plaintiff,)

v.)

BOISE CASCADE CORPORATION,)

Defendant.)

Civil Action No. 02-2677

Hon. William H. Yohn

EXPERT REPORT OF TONY SPAETH

April 23, 2003

Tony Spaeth

Identity

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The Use of the Noun "Solutions" in Corporate Nomenclature Systems

by Tony Spaeth, Tony Spaeth / Identity
April 23, 2003

Thirty-eight years ago, I joined a corporate identity specialist firm called Lippincott & Margulies. In the 60s, L&M was pioneering in "CI" as a legitimate design and consulting specialization. Among other aspects of CI analysis and planning, we were developing new ideas and approaches to corporate "nomenclature systems" ... using the naming of principal business units as an additional tool for defining, and communicating, the nature and scope of the parent corporate brand. I played an active role in this conceptual development. (For example when Ace Comb Company became Amerace, after acquiring the Swan hose business, I proposed Swan as core of an Amerace "Lawn Products" competence area, a companion to a Personal Products unit.)

I returned to full-time corporate identity consulting eighteen years ago -- first, as marketing director and director of naming services for a leading identity firm, then for the past twelve years as head of an independent practice. In these eighteen years, I have seen the word "Solutions" become generally accepted, by business namers and their audiences alike, as a substitute for such nouns as "Products" or "Services."

"Solutions" is commonly intended to describe a business offering focused on an end result desired by customers, rather than on purchase of the individual product and service components that may be required to achieve that end result. Typically, a Solutions offering includes products whose utility is enhanced by the addition of consultative or other customized services.

Often, then, a "Solutions" offering comes from a company traditionally associated with product manufacturing. "Solutions" communicates the addition of a service function or functions, such as selecting the product configuration best suited to the customer's application, and perhaps installing it and training customer employees in its use.

In nomenclature, "Solutions" will always be the noun, modified by some other term or terms describing the category in which the customer might have problems. "Solutions" suggests both multiplicity of offerings, and a degree of customization: the implied promise is that 'whatever your specific problem may be, we can craft or have at hand a solution.'

Microsoft, for example, has just launched "Microsoft Business Solutions," explained (on its Web site) as "a family of connected applications and services for small and mid-sized businesses, scalable and customizable."

spaeth@identityworks.com

www.identityworks.com

Use of "Solutions" in corporate nomenclature has become commonplace, if not yet a cliché. For example:

1. In Hoover's database of some 18,000 U.S. companies, 308 names (1.7%) include "Solutions."
2. In Dun & Bradstreet's database of 14,000,000 companies, 53,320 (0.4%) include "Solutions."
3. A Google search of "solutions" produces over thirty-two million hits – more than I can readily classify. But of the top thirty Google hits, fourteen show Solutions used as part of an entity's name, with capital S; specifically,

Network Solutions
Insignia Solutions
Serials Solutions
Sonic Solutions
Cross-Cultural Solutions
Ikon Office Solutions
Genomic Solutions

Micro Solutions
Applied Digital Solutions
Milonic Solutions
JDNet Solutions
Volunteer Solutions
Creative Solutions
Integrated Computer Solutions


4. A more specific search of U.S. businesses, via ReferenceUSA, lists 98 entities (after eliminating duplicate locations) whose names contain both "Building" and "Solutions." (One of them is Boise Building Solutions.) [See attached list.]

Conclusions:

"Boise Building Solutions" is in no sense fanciful in its use of the phrase Building Solutions; it is using a generic description, commonly understood as an offering focused on solving customer problems related (in this case) to sourcing building materials.

Taking also into consideration its corporate nomenclature system context (Boise Building Solutions is a companion to Boise Paper Solutions and Boise Office Solutions), it is also clear that as a corporation Boise is using "Solutions" to promote a high employee priority on solving customer's problems.

Finally, because "Boise Building Solutions" would never appear (or be spoken) without its "Boise" branding, without which it has no utility, the chance of marketplace confusion with a CertainTeed offering however named is zero.



Tony Spaeth
Tony Spaeth / Identity

I have prepared this material as testimony in the matter of CertainTeed v. Boise Cascade Corp., being compensated at the rate of \$250 per hour. I have not otherwise testified in the past four years. Summaries of my professional background and publications:

Background

Tony Spaeth is an internationally recognized expert in the use of identity as a tool in marketing and managing. As an independent identity consultant, he specializes in

- corporate positioning and corporate brand platforms
- diagnosis of corporate and product identity needs
- clarification of strategic vision through identity
- nomenclature systems and name development.

1995-02 clients include Caterpillar, Celera Genomics, Commonfund, Dow Jones, Eastman Chemical, Engelhard, Ford Motor Company, Footstar, Flowserve, J.P. Morgan, Malden Mills, Orbital Sciences, Sony Corporation and State Street Corporation.

Tony studied architecture at Princeton and in 1963 received his Masters in Business Administration from Harvard. In 1965 he joined the pioneering identity firm Lippincott & Margulies, learning and contributing to the new identity profession in its formative years.

In subsequent years he practiced marketing management in diverse industries: in packaged goods, as a product manager in American Home Products' food division; as a consultant to the supermarket industry on private brand management; as a consultant to account management and clients of NW Ayer advertising; and as a corporate vice president and director of marketing of several Citibank business units.

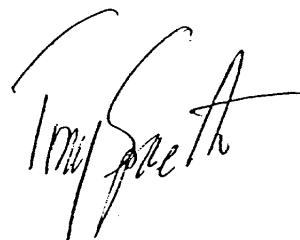
In 1985, he rejoined colleagues from 1965's L&M, now the principals of the identity firm Anspach Grossman Portugal. He served as the firm's marketing director and as a consulting principal, supervising such client engagements as Pfizer and American Express. In addition, Spaeth reorganized and directed the firm's naming capability, which during his tenure produced such names as Navistar, Optima, Signet, Trinova, Ecolab and (Ford) Explorer.

Tony established his current practice as an independent identity advisor in 1990. He serves companies directly, and teams with communications and graphic design firms. Other clients served include Pfizer, New England Mutual Life, McGraw-Hill, Raytheon, IBM Personal Computer Co., Technology Service Solutions (IBM), MobileMedia, and Advanta.

Publications

Beginning in its January/February 1992 issue, the Conference Board's magazine Across The Board has published Spaeth's annual review of the previous year's noteworthy corporate identity programs. The eleventh in the series, "Honors To The Bold," appears in the current March/April 2003 issue.

Spaeth maintains the website www.IdentityWorks.com primarily as a learning resource, for students and enthusiasts of corporate branding around the world.



CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 22nd day of May, 2003, I served a true and correct copy of the foregoing DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO PRECLUDE THE PROPOSED TESTIMONY AND EXPERT REPORTS OF GREG BROOKS, MICHAEL STEPNOWSKI AND TONY SPAETH (and proposed form of Order) on the following:

Roberta Jacobs-Meadway
Lynn Rzonca
Richard Peirce
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Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile



James D. Cashel